

I. THE PENDING CLAIMS ARE ALLOWABLE OVER THE CITED ART

The Examiner rejected claims 56-71 and 73-77 in view of the combination of U.S. Patent No. 6,965,948 to Eneborg et al., and U.S. Patent No. 6,356,541 to Muller et al. in the Office Action dated September 13, 2010 (hereafter "the Office Action").

Claim 72 was rejected as being obvious in view of the combination of Tayloe et al., Muller et al., and Eneborg et al. (Office Action, at 15-16)

A. Burden Of Proving Obviousness Under 35 U.S.C. § 103

"All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP § 2143.03 (emphasis added). "When evaluating claims for obviousness under 35 U.S.C. 103, **all the limitations of the claims must be considered and given weight.**" MPEP § 2143.03. "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." *Id.* "A 35 U.S.C. 103 rejection is based on 35 U.S.C. 102(a), 102(b), 102(e), etc. depending on the type of prior art reference used and its publication or issue date." MPEP § 2141.01.

To establish a *prima facie* case of obviousness, an Examiner must show that an invention would have been obvious to a person of ordinary skill in the art at the time of the invention. MPEP § 2141. "Obviousness is a question of law based on underlying factual inquiries." *Id.* The factual inquiries enunciated by the Court include "ascertaining the differences between the claimed invention and the prior art" and "resolving the level of ordinary skill in the pertinent art." MPEP § 2141.

"A statement that modifications of the prior art to meet the claimed invention would have been 'well within the ordinary skill of the art' at the time the claimed invention was made' because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references." MPEP § 2143.01. "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, **there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.**" MPEP § 2143.01 (citing *KSR*, 82 U.S.P.Q.2d at 1396) (emphasis added).

For instance, an invention that permits the omission of necessary features and a retention of their function is an indicia of nonobviousness. *In re Edge*, 359 F.2d 896, 149 U.S.P.Q. 556 (CCPA 1966); MPEP 2144.04. A conclusory statement to the contrary is insufficient to rebut such an indicia of nonobviousness. *See* MPEP § 2143.01.

Moreover, "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." MPEP § 2143.01. Also, "the proposed modification cannot render the prior art unsatisfactory for its intended purpose." MPEP § 2143.01.

B. The Pending Claims Are Allowable

1. Claims 56-59 And 62-72 Are Allowable

Claims 56-59 and 62-72 define a method that includes the steps of a telecommunication terminal device connecting to the first network, determining a location of the telecommunication terminal device with the aid of the first network; and recording and saving quality of service

information for the first network while connected to the first network. The telecommunication terminal device also saves location data comprised of information relating to the determined location. The terminal device also links the location information of the telecommunication terminal device to the recorded and saved quality of service information for the first network. The terminal device also analyzes the saved quality of service information and saved location data for the first network to select access to the first network or a second network of at least one second network for connecting to the first network or the second network of the at least one second network.

The cited art does not teach or suggest such limitations. For example, Eneborg et al. do not teach or suggest any determination of any location, recording and saving quality of service data while connected to a network, nor any linking of location information with saved quality of service data that has been recorded and stored. Nor does Eneborg et al. teach or suggest the analyzing of such data for use in select access to any networks to connect to those networks.

The Examiner cited Column 6, lines 1-20 of Eneborg et al. as disclosing a terminal device analyzing saved quality of service information for a first network to select access to a first or second network. (Office Action, at 6) To the contrary, Eneborg et al. do not provide such a disclosure. In fact, Column 6, lines 1-20 of Eneborg disclose the functionality of a network terminating device, which may be, for example, a node or an access point, not a telecommunication terminal device, which may be for example, a mobile telephone or a laptop. (*Compare* Eneborg et al. at Column 5, line 60 through Column 6, line 20 *with* Specification, at ¶¶ 2, 4, 26 and claim 65). There is no disclosure or suggestion in Eneborg et al. of any

telecommunications terminal device storing any quality of service data while it is connected to a first network or location data nor of analyzing such stored data.

In fact, Eneborg et al. teach away from such storage of data. Eneborg et al. teach that an end device 210 should make a network selection based on current information it receives from network terminating devices that identify current quality of service information and other information. (Eneborg et al., at Col. 8, lines 24-35) Eneborg et al. clearly do not teach or suggest any recording or storage of any quality of service information while connected to a first network. Nor does Eneborg et al. teach or suggest any terminal device using such recorded and stored data to assess which network a device should access or the storage of any quality of service information to use after disconnecting from a network as required by claim 56.

Further, Muller et al. also fail to teach or suggest a telecommunication terminal device saving network quality of service information and location data for use in subsequent selections of networks to access nor analyzing such stored data for a selection of a network. The Examiner cited Muller et al. at Col. 8, line 66 through Col. 9, line 5 as teaching a terminal device determining its location. (Office Action, at 7) and also cited Column 11, lines 20-52 (Office Action, at 12 as disclosing a determination of a location by a terminal. However, Muller et al. do not teach saving any determined location information while connected to a network nor saving any quality of service information while a device is connected to a network.

None of the cited art, alone or in any combination, teaches or suggests all the limitations of claims 56-59 and 62-72. The Claims 56-59 and 62-72 are allowable over the cited art.

2. Claims 73-77 Are Allowable

Claim 73 requires a telecommunication terminal device to be configured to determine a location the telecommunication terminal device when connected to a network and link that location with saved quality of network connection information that is recorded when the device is connected to a network such that a connection analysis module can access and evaluate the location information when analyzing network connection information. Claims 74-77 depend directly or indirectly from claim 73 and therefore also contain these limitations.

As discussed above with reference to claims 56-59 and 62-72, none of the cited art teaches or suggests any terminal device configured to link saved location data with saved quality of network connection information for use in analyzing network connection information or determining which network to access.

Tayloe et al. also fail to teach or suggest a telecommunication terminal device saving network quality of service information and location data for use in subsequent selections of networks to access or linking such data. Tayloe et al. is directed to inter-network hand-offs. (Tayloe et al., Col. 3, lines 55-57). Tayloe et al. teach a network configured to determine a location of a subscriber unit. (Abstract). For instance, Column 4, lines 1-35 of Tayloe et al. teach that different networks exchange network maps for determining the location of a subscriber unit. There is no teaching or suggestion of the terminal device determining its location or using its location for analyzing any network access options.

None of the cited art, alone or in any combination, teaches or suggests all the limitations of claims 73-77. Therefore, claims 73-77 are allowable over the cited art.

C. Claims 58-59 Are Independently Allowable

Claim 58 depends from claim 56 and further requires that the telecommunications terminal determine its location and also link location data to recorded and saved quality of service data while the telecommunication terminal device is connected to the first network.

Claim 59 depends from claim 58 and therefore also contains these limitations.

None of the cited art teaches or suggests the determining of a telecommunication terminal device location while connected to a network and linking of that location to saved and recorded quality of service information that was saved and recorded while the terminal device was connected to a network. Therefore, the combination of cited art cannot render these claims obvious.

As discussed above, Eneborg et al. do not teach or suggest any linking of location information or recording and storage of quality of service data while connected to a network. Further, Muller et al. fail to teach or suggest any linking of location information or recording and storage of quality of service data while connected to a network as required by claims 58-59.

The computer disclosed by Muller only makes a determination of a location of a central computer prior to connecting to a network and the end devices disclosed by Eneborg do not save, let alone link any quality of service data recorded and saved while connected to a network. The cited combination of art does not provide any teaching of a terminal device recording and saving quality of service information while connected to a network nor linking that recorded and saved quality of service data to location data while that terminal device is connected to a network as required by claims 58-59. Therefore, claims 58 and 59 are patentable over the cited references.

D. Claims 60-61 Are Allowable

Claim 60 is an independent claim and defines a method that requires a telecommunication terminal device to communicate with at least one other telecommunication terminal device to obtain quality of service information for at least one second network for use in determining which network to select. Claim 61 depends from claim 60 and requires that the one or more other telecommunication terminal device be within a predetermined distance of the telecommunication terminal device.

Claims 60 and 61 are patentable over the cited preferences. There is no teaching of any terminal device communicating with another terminal device to exchange quality of service information in the cited art. For example, none of the end devices disclosed by Eneborg et al. share quality of service information with the other end devices. Nor is such information shared by any end device in Muller et al.

None of the cited art teaches or suggests a telecommunication terminal device that obtains quality of service information for any network that is saved on another telecommunication terminal device for use in determining a network to select as required by claims 60-61. Moreover, none of the cited art teaches or suggests that these other telecommunication terminal devices be within a predetermined distance of the telecommunication terminal device as required by claim 61. For all these reasons claims 60-61 are allowable over the cited art.

1. Claim 60 Requires Communications With At Least One Other Terminal Device

At page 5 of the Office Action, the Examiner states that there is no limitation in claim 60 requiring a telecommunication terminal device to communicate with other terminal devices to

obtain quality of service data for at least one second network for use in determining a network to select. To the contrary, claim 60 expressly requires such a limitation. **Specifically, claim 60 includes the limitation that "the telecommunication terminal device communicating with at least one other telecommunication terminal device to obtain quality of service information fro the at least one second network for use in determining which network to select."**

(emphasis added) This limitation clearly requires a terminal device to communicate with another terminal device to obtain quality of service information for a second network to use that information in determining which network should be selected.

As noted in page 5 of the Office Action, the Examiner failed to consider this limitation. However, the limitation must be considered because it is a limitation of claims 60-61. As noted above, the cited art fails to teach or suggest the limitations of claims 60-61.

E. Claims 75-77 Are Independently Allowable

Claims 75-77 depend directly or indirectly from claim 73 and also require a reputation information client module connected to a connection analysis module. The reputation information client module is configured to direct communications with other telecommunication terminal devices to obtain network access information that the other telecommunication terminal devices have stored. The connection analysis module is configured to access the network access information that the other telecommunication terminal devices have stored that was obtained by the reputation information client module.

The Examiner cited Column 6, lines 1-20 of Eneborg et al. as disclosing a reputation information client module "configured to direct communications with other telecommunication terminal devices to obtain network access information that the other telecommunication terminal

devices have stored." (Office Action, at 13). To the contrary, this portion of Eneborg et al. disclose a terminal device, end device 210 that exchanged communications with an access point, or network terminal device 220. There is no teaching or suggestion of any module that directs any communication with other terminal devices, such as, for example, other mobile telephones or laptops in Eneborg et al.

None of the cited art teaches or suggests a telecommunication terminal device that obtains quality of service information for any network that is saved on another telecommunication terminal. Nor does the cited art teach any connection analysis module configured to access such information. Accordingly, claims 75-77 are allowable.

F. Claim 62 Is Independently Allowable

Claim 62 depends from claim 56 and requires that the telecommunication terminal device be configured to communicate the saved quality of service information for the first network to other telecommunication terminal devices. As noted above with reference to claims 60 and 61, the cited art does not teach or suggest such saved quality of service information nor terminal devices configured to communicate the saved quality of service information for the first network to other telecommunication terminal devices. Claim 62 is therefore independently allowable over the cited art.

G. Granted European Patent No. EP 1 557 002 Shows That The Pending Claims Are Allowable

The present application corresponds to granted European Patent No. EP 1 557 002. For the Examiner's reference, a copy of this patent was previously provided to the Examiner with the Amendment dated September 8, 2009. The European Patent Office has found the invention

disclosed in the present application to warrant patent protection. This is an indicia of the non-obvious nature of the pending claims and shows that the claims should be allowed.

CONCLUSION

For at least the above reasons, reconsideration and allowance of all pending claims are respectfully requested.

Respectfully submitted,

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